



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF STATE COUNSEL
LITIGATION BUREAU

June 29, 2022

BY ECF

The Honorable James R. Cho
United State Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: McCarthy v. State of New York, 21 Civ. 01169 (WFK)(JRC)

Dear Magistrate Judge Cho:

This Office represents defendant State of New York in the above-referenced matter brought by *pro se* plaintiff Ana McCarthy (“Plaintiff”) apparently under 42 U.S.C. § 1983.¹ I write to correct material inaccuracies in Plaintiff’s recent status report to the Court regarding service of the Amended Complaint. ECF No. 21.

First, Plaintiff has failed to properly serve the Amended Complaint pursuant to Rule 4(c)(1) of the Federal Rules of Civil Procedure, since Plaintiff’s attempted service² comprised only of the amended summons without the amended complaint. *See* Exhibit A (June 2, 2021 mailing addressed to State of New York/Andrew Cuomo comprised of only a two-page amended summons); Exhibit B (June 2, 2021 mailing addressed to OCFS comprised of only a two-page amended summons); and Exhibit C (June 2, 2021 mailing addressed to Sheila Poole comprised of only a two-page amended summons).

Second, despite the Amended Complaint having been filed over one year ago (May 26, 2021), ECF No. 16, this author (nor his current client or possible future clients) has ever seen the Amended Complaint (or been advised of its contents and allegations). Not only has Plaintiff failed

¹ As addressed *infra*, Plaintiff apparently has named additional New York State-affiliated defendants New York State Office of Children and Family Services (“OCFS”) and Sheila Poole (Commissioner of OCFS) (as well as New York City-affiliated defendants) in an Amended Complaint; however, since Plaintiff has not properly served these newly named New York State-affiliated defendants, this Office does not currently represent them.

² Additionally, Plaintiff’s purported service is defective since she merely served the bare summons by Certified Mail, which is an improper method of service. *See, e.g., Obot v. Navient Solutions, Inc.*, 726 F. App’x 47, 48 (2d Cir. 2018) (summary order); *Cassano v. Altshuler*, 186 F. Supp. 3d 318, 321 (S.D.N.Y. 2016).

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to serve it, as recounted *supra*, but the document itself is unavailable via ECF as it has apparently been sealed. ECF Nos. 11 and 13.

Accordingly, as concerning the New York State-affiliated named-parties, the correct status of this case is that Plaintiff has failed to timely or properly serve the Amended Complaint.

Respectfully submitted,



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cc: Ana McCarthy
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